



**UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.**

Served: November 25, 2003

Issued by the Department of Transportation
on the 25th day of September, 2003

Application of

C.A.L. CARGO AIRLINES LTD.

for a foreign air carrier permit under 49 U.S.C. § 41301

Docket OST-2000-7251

ORDER ISSUING FOREIGN AIR CARRIER PERMIT

Summary

In this order we are issuing C.A.L. Cargo Airlines Ltd. (C.A.L. Cargo) an initial foreign air carrier permit to engage in scheduled foreign air transportation of property and mail between Israel and the United States consistent with the Israel-U.S. bilateral aviation agreement.

Application

By application filed April 13, 2000, as amended,¹ C.A.L. Cargo requests that we issue it an initial foreign air carrier permit authorizing C.A.L. Cargo to engage in scheduled foreign air transportation of property and mail from points behind Israel, via Israel and named intermediate points, to specified points in the United States; and authority to conduct all-cargo charters in accordance with Part 212 of the Department's rules, consistent with our bilateral aviation agreement with Israel.²

¹ On June 13, 2001, C.A.L. Cargo filed a related permit application in Docket OST-2001-9918. We will incorporate the evidentiary information filed in Docket OST-2001-9918 in the context of the permit application here (Docket OST-2000-7251) and dismiss C.A.L. Cargo's request in Docket OST-2001-9918.

² C.A.L. Cargo holds Department exemption authority to conduct all-cargo services between Tel Aviv and New York and Chicago, via specified intermediate points. *See, e.g.* Notices of Action Taken of February 25, 2003, in Docket OST-2000-7252; and April 22, 2003, in Docket OST-2001-9137. C.A.L. Cargo also holds Department authority to conduct all-cargo charters subject to 14 CFR Part 212 of our rules.

In support of its application, C.A.L. Cargo states that it has been licensed and designated by the Government of Israel to perform the proposed services; that it is substantially owned and effectively controlled by citizens of Israel; and that it is operationally and financially fit to perform the proposed services.

No answers were filed in response to C.A.L. Cargo's permit application.

Decision

We have reviewed the record in this case and have decided to grant the application using simplified Subpart B procedures.³ The public was informed of the application by notice in the Federal Register and the Department's published weekly list of applications filed.⁴ The notice described the authority sought and gave interested persons an opportunity to submit evidence and objections to the award of the authority. Simplified procedures are appropriate in this case because there are no material determinative issues of fact requiring other procedures.

We find that grant of this foreign air carrier permit is in the public interest, and that C.A.L. Cargo is qualified to conduct the proposed operations.

Public Interest Considerations

The U.S.-Israel bilateral aviation agreement (the Agreement) provides the rights to conduct the all-cargo services proposed by C.A.L. Cargo.

Operational and Financial Fitness

We find that C.A.L. Cargo is operationally and financially fit to conduct the operations at issue here. C.A.L. Cargo is a private corporation incorporated on July 15, 1976, by Israeli agricultural organizations with the primary objective of offering the agricultural sector in Israel convenient and economical air service to Europe. C.A.L. Cargo has been providing all-cargo services between Israel and the United States since obtaining initial Department exemption authority on July 14, 2000. C.A.L. Cargo has experienced management, and has had no safety violations, fatal accidents or tariff violations in the last five years. C.A.L. Cargo services to the United States are operated with B-747 freighter aircraft registered in Israel. Maintenance on its aircraft will be performed by GE-IAI, a company

³ 14 CFR 302.210 (a)(2) and 302.213.

⁴ 65 FR 30182, May 10, 2000.

jointly owned by GE Electric Corporation and Israel Aircraft Industries Ltd. C.A.L. Cargo holds effective authority from its homeland to conduct the proposed operations.⁵ By memorandum dated June 2, 2003, the Federal Aviation Administration advised us that it knows of no reason why C.A.L. Cargo's request for a foreign air carrier permit should not be approved. Finally, we have verified C.A.L. Cargo's compliance with 14 CFR Parts 203 (Waiver of Warsaw Convention Liability Limits and Defenses), 205 (Aircraft Accident Liability Insurance) and 129 (Foreign Carrier Operations Specifications).

C.A.L. Cargo has provided financial information which indicates that it can conduct the proposed services without jeopardizing shipper funds. Specifically, for calendar year ending December 31, 2001, C.A.L. Cargo reported total assets of \$92 million and total liabilities of \$82 million and owners' equity of \$10 million. For calendar year 2001, C.A.L. Cargo reported a net loss of approximately \$3 million. For the year ending December 31, 2000, C.A.L. Cargo reported total assets of \$62.6 million, total liabilities of \$52 million, and owners' equity of \$10.6 million. For calendar year 2000, C.A.L. Cargo reported a net loss of approximately \$600 thousand.

Ownership and Control

We find that C.A.L. Cargo is substantially owned and effectively controlled by homeland nationals. Specifically, C.A.L. Cargo is owned by four Israeli entities.⁶ In addition, all of C.A.L. Cargo's officers, directors and key management personnel are citizens of Israel.

In view of the foregoing, and all the facts of record, we find and conclude that:

1. It is in the public interest to issue C.A.L. Cargo an initial foreign air carrier permit in the form attached;
2. C.A.L. Cargo is fit, willing and able properly to perform the foreign air transportation described in the attached permit and to conform to the provisions of the Act, and to our rules, regulations, and requirements;

⁵ On December 13, 1999, C.A.L. Cargo was issued a Commercial Operating License (No. 91/10/99) by the Deputy Prime Minister and Minister of Transport. By diplomatic note dated July 6, 2000, the Government of Israel designated C.A.L. Cargo to operate scheduled and charter all-cargo services under Article 3 and 4 of the Agreement.

⁶ Nir Shitufi National Cooperative Society for the Settlement of Hebrew Workers in Israel (43%), The Vegetable Production and Marketing Board (29%), The Production and Marketing Board of Ornamental Plants (21%), and the Fruit Board (7%). The Vegetable Production and Marketing Board and The Production and Marketing Board of Ornamental Plants are both owned by the Government of Israel.

3. The public interest requires that the exercise of the privileges granted by the permit should be subject to the terms, conditions, and limitations contained in the attached permit, and to such other reasonable terms, conditions, and limitations required by the public interest as we may prescribe;
4. The issuance of this foreign air carrier permit will not constitute a “major regulatory action” under the Energy Policy and Conservation Act of 1975, as defined in section 313.4(a)(1) of our Regulations;⁷ and
5. The public interest does not require an oral evidentiary hearing on the application.

ACCORDINGLY,

1. We issue, in the form attached, a foreign air carrier permit to C.A.L. Cargo authorizing it to engage in (1) scheduled foreign air transportation of property and mail from points behind Israel via Israel and Cyprus, Turkey, Greece, Romania, Italy, Spain, Portugal, Switzerland, Austria, Federal Republic of Germany, France, Luxembourg, Belgium, Netherlands, United Kingdom, Ireland, Montreal, and Toronto, to New York (and ten additional points in the United States to be selected by Israel and notified to the United States), and beyond (a) one specified U.S. point to Mexico City, and (b) any specified U.S. points to South America and Asia, without traffic rights between U.S. points beyond the United States.
2. C.A.L. Cargo is also authorized to engage in all-cargo charter trips in foreign air transportation, subject to the terms, conditions, and limitations of the Department’s regulations governing charters;
3. The exercise of the privileges granted above is subject to C.A.L. Cargo’s compliance with the conditions listed in Attachment A;
4. We dismiss as moot the request of C.A.L. Cargo’s permit application in Docket OST-2001-9918;
5. To the extent not granted, we deny all requests for relief in Docket OST-2000-7251;
6. Unless disapproved by the President of the United States under § 41307 of Title 49 of the U.S. Code, this order and the attached permit shall become effective on the 61st day after its submission for § 41307 review, or upon the date of receipt of advice from the

⁷ This finding is based on the fact that the grant of this permit will not result in a near-term increase in fuel consumption in excess of 10 million gallons.

President or his designee under Executive Order 12597 and implementing regulations that he or she does not intend to disapprove the Department's order under that section, whichever occurs earlier;⁸ and

7. We will serve a copy of this order on C.A.L. Cargo; the Ambassador of Israel in the United States; the Department of State; and the Federal Aviation Administration (New York IFO).

By:

MICHAEL W. REYNOLDS
Acting Assistant Secretary for Aviation
and International Affairs

(SEAL)

*An electronic version of this document is available on the World Wide Web at
http://dms.dot.gov/reports/reports_aviation.asp*

⁸ This order was submitted for § 41307 review on September 25, 2003. The 61st day is November 25, 2003. Since the President's designee did not disapprove this order before that date it became effective on November 25, 2003.



UNITED STATES OF AMERICA
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PERMIT TO FOREIGN AIR CARRIER

C.A.L. Cargo Airlines Ltd.

A Flag Carrier of Israel

is authorized, subject to the following provisions, the provisions of Title 49 of the U.S. Code and the orders, rules, and regulations of the Department of Transportation, to engage in scheduled foreign air transportation of property and mail as follows:

from points behind Israel via Israel and Cyprus, Turkey, Greece, Romania, Italy, Spain, Portugal, Switzerland, Austria, Federal Republic of Germany, France, Luxembourg, Belgium, Netherlands, United Kingdom, Ireland, Montreal, and Toronto, to New York (and ten additional points in the United States to be selected by Israel and notified to the United States), and beyond (a) one specified U.S. point to Mexico City, and (b) any specified U.S. points to South America and Asia, without traffic rights between U.S. points beyond the United States.

The holder shall also be authorized to engage in all-cargo charter trips in foreign air transportation, subject to the terms, conditions, and limitations of the Department's regulations governing charters.

This permit and the exercise of the privileges granted in it shall be subject to the terms, conditions and limitations in both the order issuing this permit and the attachment to this order, and to all applicable provisions of any treaty, convention or agreement affecting international air transportation now in effect, or that may become effective during the period this permit remains in effect, to which the United States and the holder's homeland are or shall become parties.

This permit shall be effective on November 25, 2003. Unless otherwise terminated at an earlier date pursuant to the terms of any applicable treaty, convention or agreement, this permit shall terminate (1) upon the dissolution or liquidation of the holder to whom it was issued; (2) upon the effective date of any treaty, convention, or agreement or amendment, which shall have the effect of eliminating the bilateral right for the service authorized by this permit

from the service which may be operated by airlines designated by the Government of Israel (or, if the right is partially eliminated, then the authority of this permit shall terminate in like part); (3) upon the effective date of any permit granted by the Department to any other carrier designated by the Government of Israel in lieu of the holder; or (4) upon the termination or expiration of the applicable air services agreement between the United States and Israel. However, clause (4) of this paragraph shall not apply if prior to such termination or expiration, the foreign air transportation authorized herein becomes the subject of another treaty, convention or agreement to which the United States and Israel become parties.

The Department of Transportation has executed this permit and affixed its seal on September 25, 2003.

By:

MICHAEL W. REYNOLDS
Acting Assistant Secretary for Aviation
and International Affairs

(SEAL)

Foreign Carrier Conditions

In the conduct of the operations authorized, the foreign carrier applicant(s) shall:

- (1) Not conduct any operations unless it holds a currently effective authorization from its homeland for such operations, and it has filed a copy of such authorization with the Department;
- (2) Comply with all applicable requirements of the Federal Aviation Administration, including, but not limited to, 14 CFR Parts 129, 91, and 36, and with all applicable U.S. Government requirements concerning security. To assure compliance with all applicable U.S. Government requirements concerning security, the holder shall, before commencing any new service (including charter flights) from a foreign airport that would be the holder's last point of departure for the United States, contact its Principal Security Inspector (PSI) to advise the PSI of its plans and to find out whether the Transportation Security Administration has determined that security is adequate to allow such airport(s) to be served;
- (3) Comply with the requirements for minimum insurance coverage contained in 14 CFR Part 205, and, prior to the commencement of any operations under this authority, file evidence of such coverage, in the form of a completed OST Form 6411, with the Federal Aviation Administration's Program Management Branch (AFS-260), Flight Standards Service (any changes to, or termination of, insurance also shall be filed with that office);
- (4) Not operate aircraft under this authority unless it complies with operational safety requirements at least equivalent to Annex 6 of the Chicago Convention;
- (5) Conform to the airworthiness and airman competency requirements of its Government for international air services;
- (6) Except as specifically exempted or otherwise provided for in a Department Order, comply with the requirements of 14 CFR Part 203, concerning waiver of Warsaw Convention liability limits and defenses;
- (7) Agree that operations under this authority constitute a waiver of sovereign immunity, for the purposes of 28 U.S.C. 1605(a), but only with respect to those actions or proceedings instituted against it in any court or other tribunal in the United States that are: (a) based on its operations in international air transportation that, according to the contract of carriage, include a point in the United States as a point of origin, point of destination, or agreed stopping place, or for which the contract of carriage was purchased in the United States; or (b) based on a claim under any international agreement or treaty cognizable in any court or other tribunal of the United States. In this condition, the term "international air transportation" means "international transportation" as defined by the Warsaw Convention, except that all States shall be considered to be High Contracting Parties for the purpose of this definition;
- (8) Except as specifically authorized by the Department, originate or terminate all flights to/from the United States in its homeland;
- (9) Comply with the requirements of 14 CFR Part 217, concerning the reporting of scheduled, nonscheduled, and charter data;
- (10) If charter operations are authorized, except as otherwise provided in the applicable aviation agreement, comply with the Department's rules governing charters (including 14 CFR Parts 212 and 380); and
- (11) Comply with such other reasonable terms, conditions, and limitations required by the public interest as may be prescribed by the Department, with all applicable orders or regulations of other U.S. agencies and courts, and with all applicable laws of the United States.

This authority shall not be effective during any period when the holder is not in compliance with the conditions imposed above. Moreover, this authority cannot be sold or otherwise transferred without explicit Department approval under Title 49 of the U.S. Code.